

INTRODUCTION

Public Law 2009 chapter 571, Part FFF (see appendix ____) was enacted by the Second Regular Session of the 124th Legislature as part of the “supplemental budget.” Part FFF has two primary components relative to the allocation of slot machine revenue as required by 8 MRSA §1036 (see appendix ____). First, it requires reporting to the Joint Standing Committees on Legal and Veterans’ Affairs and Appropriations and Financial Affairs from recipients of slot revenue allocation by September 15th of each year. This report is required to include historical allocation and expenditure information beginning with the fiscal year 2005-06, when the racino that operates slot machines began operations.

The funds listed in Part FFF required to submit the annual reports are as follows:

- The Fund to Supplement Harness Racing Purses (Title 8 section 298);
- The Sire Stakes Fund (Title 8, section 281);
- The Agricultural Fair Support Fund (Title 7, section 91);
- The University of Maine System Scholarship Fund (Title 20-A, section 10909);
- The Maine Community College System for scholarship distribution (in accordance with Title 20-A, section 12716);
- The Fund to Encourage Racing at Maine’s Commercial Tracks (Title 8, section 299); and
- The Fund to Stabilize Off-track Betting Facilities (Title 8, section 300).

The second component of Part FFF directed the Joint Standing Committee on Legal and Veterans’ Affairs to conduct a review of the allocation of funds required by current law and to make recommendations that address an appropriate framework for ongoing review of slot machine revenue allocation. This framework would provide for consideration of the adequacy of distribution of revenue among existing and potential new purposes and to compare to the principles of allocation of slot revenue or future casinos with the intent of the voters who approved the operation of gambling facilities.

The Legal and Veterans’ Affairs Committee was authorized to hold 4 meetings to accept the initial slot revenue recipient reports, conduct its review and make recommendations. The first meeting was held on August 17th when the committee reviewed the current law that provides for the allocation of slot machine revenue, a description of the funds that receive revenue, the original allocation that was part of the 2003 citizen initiative that first authorized the operation of slot machines and a history of dollars distributed since the slot machine facility in Bangor began operating in November of 2005. Committee members also communicated specific information that they wished to be included in the revenue recipient reports due on September 15th. The second meeting was held on September 27th. All of the reports requested or required in accordance with Part FFF were received by the September 15th deadline with the exception of the report from the off-track betting facility in Sanford and the commercial harness racing track in Scarborough (these reports were received just prior to the committee’s third meeting). The committee allowed for presentation of the reports, a question and answer period and an opportunity for anyone in attendance to offer comment on the allocation of racino revenue. The third meeting of the committee was held on October 13th. At this meeting the committee reviewed a flow chart that shows the distribution of slot machine revenue including secondary distributions prescribed by statute, like the Harness Racing Commission Operating account and agricultural fair premiums (see appendix ____). A framework for reporting was proposed and legislative changes were

recommended. The final meeting, held on November 16, 2010 allowed for review of the recommendations made in this report.

BACKGROUND

The 2003 Citizen's Initiative and LD 1820

In November of 2003, Maine voters supported a measure placed on the ballot as a result of a citizen's initiative that proposed to allow the operation of slot machines at existing commercial harness racing tracks. The vote was 272,394 to 242,490 in favor of the measure. The question read:

"Do you want to allow slot machines at certain commercial horse racing tracks if part of the proceeds are used to lower prescription drug costs for the elderly and disabled, and for scholarships to the state universities and technical colleges?"

The law that passed was originally proposed as LD 1371 (see appendix___) An Act to Allow Slot Machines at Commercial Horse Racing Tracks. Soon after the commencement of the Second Regular Session of the 121st Legislature in January 2004, Governor Baldacci submitted LD 1820 An Act to Establish the Gambling Control Board to License and Regulate Slot Machines at Commercial Harness Racing Tracks. LD 1820 repealed LD 1371 and replaced it with a broader regulatory framework that included the establishment of the Gambling Control Board within the Department of Public Safety and prescribed a distribution of slot machine revenue that built upon the distribution established by LD 1371. The following shows a comparison of the distributions of slot machine revenue in each bill:

Initiated Bill 2003 c. 1 (LD 1371)	Current Law as enacted by LD 1820 PL 2003 c. 687
<p>No "coin in" – all distributions are from slot revenue after prize pay-outs</p> <ul style="list-style-type: none">• 1% to board for administrative expenses (they are authorized to expend up to \$250,000 of that for gambling addiction services)• 7% to harness racing purses (all tracks)• 1% to Sire Stakes Fund• 3% Agricultural Fair Support Funds• 10% to Fund for a Healthy Maine for prescription drugs for the elderly• 2% to University of Maine System scholarships via FAME• 1% to Community College System via Board of Trustees <p>(Total 25% of net slot revenue – *IB language referred to this as "gross revenue" meaning coin-in minus pay back to players)</p>	<ul style="list-style-type: none">• One percent of the gross revenue or "coin-in" goes directly to the state to cover administrative and enforcement costs.• The remaining net slot machine income (gross revenue after player payouts) is divided, with 61% going to the slot machine operator and 39% to be distributed as follows:<ul style="list-style-type: none">○ 3 % to the General Fund for administrative expenses of the board, including gambling addiction counseling services;○ 10% to supplement harness racing purses;○ 3 % to the Sire Stakes Fund to support breeding of Maine Standardbred horses;○ 3 % to the Agricultural Fair Support Fund;○ 10% to the Fund for a Healthy Maine for prescription drug benefits for the elderly;○ 2% for University of Maine System scholarships;○ 1% for Maine Community College System scholarships;○ 4% to the Fund to Encourage Racing at Maine's Commercial Tracks;○ 2% to the Fund to Stabilize Off-track Betting Facilities, to be reduced to 1% after 4 years with the remaining 1% going back to the General Fund; and○ 1% to the host municipality.

The changes made by LD 1820 to the distribution framework, often referred to as the “cascade,” primarily benefitted the harness racing industry and the general fund.

Slot Revenue Recipients

The Fund to Supplement Harness Racing Purses: This fund was enacted as part of LD 1820 and receives 10% of the net slot revenue that is distributed in accordance with Title 8, section 1036. It provides funds to supplement harness racing purses for races conducted at commercial tracks and agricultural fairs. The fund is distributed using a formula that multiplies the amount of money available in the fund by the number of race dashes assigned to each track as divided by the total number of race dashes assigned to all of the tracks. The two commercial tracks get the bulk of the fund. In 2009, the commercial track in Scarborough received 53.5% of the distribution and the commercial track in Bangor received 23.1% of the distributions from this fund. Ten agricultural fairs divided the remaining distribution of 23.4%.

The Sire Stakes Fund/Standard-bred Horses: This fund was established prior to the enactment of LD 1820. It receives a portion of the handle (wagers placed on live harness and simulcast races) that is distributed among members of the industry. In addition to the percentage of the harness racing handle, under LD 1820 this fund receives 3% of the net revenue from slot machines. The slot machine revenue distributions are deposited by the Department of Agriculture, Conservation and Forestry into a trust account entitled the Sire Stakes Fund. The statutory purpose of the fund is to encourage and promote the breeding of a strain of Maine Standardbred horses. The disbursements from the fund are required to be directed toward supplementing harness racing purses and the costs of administration of the standard breeder program.

The Agricultural Fair Support Fund: This fund was enacted as part of LD 1820 and receives 3% of the net slot machine revenue distribution. This fund covers the cost of administration for the Fair Coordinator within the Department of Agriculture, Conservation and Forestry and benefits harness racing and fairs generally. After the department’s administrative costs, 34% of the fund is distributed to commercial tracks and agricultural fairs that conduct harness racing for purse supplements. It is disbursed using the same formula as the Fund to Supplement Harness Racing purses that is based on the number of dashes run at each track. In 2009, commercial tracks received about 77% of the disbursements from this fund while 10 agricultural fairs shared the remaining 23% of the purse supplement portion of the fund. The other purpose of the Agricultural Fair Support fund, to which 66% of the distribution is dedicated, is to pay fair premiums. Premiums are essentially prizes or awards paid to exhibitors at agricultural fairs ranging from livestock displays to pulling contests to canned goods.

The Fund for a Healthy Maine – Prescription Drugs for the Elderly and Disabled Program: This fund was established prior to the enactment of LD 1820. The Drugs for the Elderly (DEL) program receives funding from other sources in addition to its 10% share of net slot machine revenues. This Department of Health and Human Services administered program pays for all or part of the costs of certain prescription drugs for Maine residents who live at or below the federal poverty line and are age 62 or older or age 19 or older and medically eligible disabled. In 2010, the Legislature passed LD 1668 An Act to Implement the Recommendation of the Initiative to Streamline State Government (Public Law 2009 c.462) that imposed a temporary cap on slot machine revenue allocated to this fund. Through the year 2012, any money in excess of \$4.5

million distributed from net slot machine revenue is forwarded to the general fund as undedicated revenue.

University of Maine System Scholarships: This fund receives 2% of the distribution of net slot machine revenue in accordance with Title 8 section 1036. All revenues credited to this fund are required to be distributed as need-based scholarships for students who are Maine residents attending the University of Maine System. The fund is under the jurisdiction and control of the Board of Trustees of the University of Maine System. Costs of administering these scholarships may not be paid for using scholarship funds.

Maine Community College System Scholarships: This fund receives 1% of the distribution of net slot machine revenue in accordance with Title 8 section 1036. Funds distributed to the system are directed to be used in accordance with scholarship guidelines set forth in statute for the Maine Community College System. These guidelines direct the Board of Trustees of the System to award scholarships based on individual need and worth. Recipients must demonstrate they can complete a course of study successfully, support the expenses of their education and show need of financial assistance.

The Fund to Encourage Racing at Maine's Commercial Tracks: This fund was created with the enactment of LD 1820 and receives 4% of the distribution of net slot machine revenue in accordance with Title 8 section 1036. This fund provides a straight distribution to commercial tracks proportional to the race days conducted by each track. In 2009, the commercial track in Scarborough received approximately 67% of the disbursement while the commercial track in Bangor received the remaining 33%. There is no statutory purpose assigned to this fund. In the event that all commercial tracks operating in the state are authorized to operate slot machines, the distribution to the fund ends.

The Fund to Stabilize Off-track Betting Facilities: This fund was created with the enactment of LD 1820 and until November of 2009, received 2% of the distribution of net slot machine revenue. As of, November 2009, this fund receives 1% of the net slot revenue distribution in accordance with Title 8, section 1036. The money in the fund is disbursed equally among off-track betting facilities (OTBs) that were licensed to operate as of December 31, 2003. In 2009, funds were disbursed to four OTBs throughout the state in Sanford, Brunswick, Lewiston and Waterville. The reduction in the distribution to this fund was part of LD 1820 as enacted and was not reduced as the result of a subsequent legislative action. The general fund now receives the 1% distribution in addition to 3% of net slot machine revenue as prescribed by Title 8 section 1036.

In addition to the statutorily created funds and purposes, the host municipality of Bangor receives a 1% distribution of net slot machine revenue in accordance with Title 8 section 1036.

Revenue from the Operation of Slot Machines

The original initiative and LD 1820 both contained a provision that required local approval by referendum election between December 31, 2002 and December 31, 2003 and for a commercial track to be eligible for a slot machine operator license. Of the two commercial tracks in the state, one in Scarborough and one in Bangor, only Bangor received local approval during that time. So, in November 2005 the new operators of Bangor Historic Track, Penn National Gaming, opened the Hollywood Slots slot machine facility with just under 500 slot machines. In July of 2008,

Hollywood Slots expanded its operation to a newly constructed facility and increased the number of slot machines to 1000.

In its first full year of operation, 2006, the racino in Bangor generated approximately \$37.5 million in net revenue of which \$12.4 million was allocated to recipients in accordance with Title 8, section 1036. The racino also deposited 1% of the gross revenue or \$5.6 million to the general fund. By the end of 2009, now operating 1000 machines, the racino generated \$50.5 million in net revenue with \$17.3 million going to section 1036 recipients. In that year, the 1% of the gross deposited to the general fund was \$6.2 million. The general fund also receives a percentage of net revenue. For a chart of slot machine revenue, as provided by the racino in Bangor, see appendix _____.

At its meeting, held on September 27, 2010, the Legal and Veterans' Affairs Committee received reports from slot machine revenue recipients required to report under Part FFF. In addition to the revenue and expense figures, the reports from members of the harness racing industry also pointed out the role that racino revenue plays in keeping their businesses going. They cited competition for gambling dollars by the expanded state lottery, illegal internet gambling and glitzy casinos within a short drive to the south, as factors that hinder their prosperity. The greater economic and cultural impacts were also central to the reports and echoed by members of the public who testified during the open comment period of the meeting. Preservation of farmland and open-space, maintaining Maine's agricultural heritage and the providing incentives for youth to enter into veterinary and farming careers are the immeasurable benefits of supporting the harness racing industry according to those who offered their comments to the committee. Supporters of the current allocation of slot revenue, relayed stories of farms that were about to be subdivided and sold as house lots that were able to be reclaimed as farmland because of the increased demand for hay, horse training and boarding of horses. They reported that this income allowed for improvements of barns, building of new stables, installation of fencing and the purchase of farm machinery, all to the economic benefit of the greater community.

The importance of the relationship between the members of the industry was stressed by those required to report and reiterated by members of the public who testified. According to their comments, each revenue recipient contributes to the greater goal of maintaining the harness racing tradition and agricultural heritage of the state. They cite the agricultural fairs' role in providing ongoing opportunities for racing and keeping the connection of Maine families to farm life, that for many is several generations in their past. The commercial tracks, referred to by supporters as a lifeline to the industry, provide the economic incentive for horse owners and breeders to continue in the sport. Reports and comments stressed that off-track betting facilities provide the opportunity for those who can't attend live racing to place wagers on Maine races through simulcasting. The enhancement of purses paid to races running Maine Standardbred horses using dollars from the Sire Stakes Fund ensures that local owners and breeders are invested in the sport and that the industry is not relying on an out-of-state horse supply, according to many breeders who testified. Overall, supporters tried to convey the interconnectedness of the recipients of slot machine revenue and how each is critical to preserving their industry.

Reports were also presented regarding the Drugs for the Elderly Program within the Fund for a Healthy Maine, scholarships for the University of Maine System and scholarships for the Maine Community College System. Most of the testimony received related to the industry recipients of slot revenue, although there was some discussion among committee members seeking

clarification of the funding of DEL and concern expressed that Maine Maritime Academy had been left out of the distribution that benefits the other state public institutions of higher education. All of the reports presented to the committee can be found in the appendix section of the report.

FINDINGS

After reviewing the allocation of slot machine revenue in accordance with Title 8, section 1036, accepting reports from those who receive slot machine revenue and hearing comment from members of the harness racing industry and the general public, the Joint Standing Committee on Legal and Veterans' affairs finds the following:

There has been limited reporting on the use of slot machine revenue allocated in accordance with Title 8, section 1036. Although the amount of revenue generated by the slot machine facility in Bangor has been consistently reported to the Legislature since it began operation in November of 2005, there has been very little information about how that money is spent by those who receive an allocation of slot machine revenue. During joint worksessions on previous biennial and supplemental budgets with the Joint Standing Committee on Appropriations and Financial Affairs, the Legal and Veterans' Affairs committee has been consistently questioned on the purpose of slot revenue allocations and whether or not that purpose is being served. Prior to this report, those questions have not been adequately addressed.

A majority of funds that receive slot revenue have no specific statutory requirements directing how they are to be spent. The Legal and Veterans' Affairs Committee recognizes that part of the intent of the allocation of slot revenue as proposed by the citizen initiative in 2003 and built upon by LD 1820 in 2004, was to support the harness racing industry that was suffering a decline because of the competition for gaming dollars by lotteries, out-of-state casinos and illegal internet gambling and the temptation to develop farm land into housing developments. However, the funds that are designated to provide that support, as described in statute, provide very little, if any, direction on how to spend the money it receives from the operation of slot machines in order to benefit the industry.

The Legislature should have measurable data to help it determine if the current distribution of slot machine revenue distributed is stabilizing or subsidizing the harness racing industry. In order to comply with the charge of Public Law 2009, chapter 571, Part FFF, to develop a framework of reporting that will permit the consideration of the adequacy of distribution of gaming revenue among existing and new potential purposes, the Legislature must have the necessary data to determine if the current allocation is serving the purpose of providing scholarships, providing assistance with prescription drug costs and stabilizing the harness racing industry. The Legal and Veterans Affairs Committee sees a distinction between stabilizing the harness racing industry and subsidizing it. There needs to be transparency and accountability among those who receive slot machine revenue so that the impact of these funds can be thoughtfully measured. Increases in attendance, purse sizes, and the number and amount wagers placed at places where harness races are run or simulcast are important to measuring the benefit of the allocation. However, the extended benefits to agriculture, maintainence open farmland and general economy that harness racing provides can not be overlooked. Future reports will provide recipients with the opportunity to show the value of the harness racing industry to the state and how slot machine revenue supports the purposes for which they were intended.

Voter intent is in the eye of the beholder. Although Part FFF directed this committee to create a reporting framework that takes into consideration principles of allocation consistent with the voters' intent, there is no objective way to determine the voter intent for the allocation of slot machine revenue. Depending on whether a person uses the actual initiative law proposed, the question posed to the voters or the campaign that was waged prior to election-day, the determination of voter intent could vary significantly.

It is difficult to establish a framework for future allocation of gaming revenue because of how racinos/casinos are authorized. To date, the authority to operate a gaming facility like a racino or a casino, has come via the citizen initiative process. Even though some members of the committee strongly support developing a standard of how future gaming revenue should be allocated, a specific percentage to the operator and a specific percentage to the general fund as undedicated revenue, as an example, the provisions of law enacted by citizen initiative are determined by those who apply to circulate petitions and collect signatures to get the measure on the ballot. The Legislature can always offer a competing measure or change the initiative after it becomes law to put this division of gaming revenue into statute, but that is perceived as politically unpalatable by some and an affront to the initiative process by others.

RECOMMENDATIONS

The Legal and Veterans' Affairs committee is not making any recommendations to change the allocation of slot machine revenue. We are recommending a framework of reporting that will provide measurable data for a future Legislature to consider in the event changes to the allocation of revenue are proposed. The framework recommended by this report will focus primarily on harness racing industry recipients and is intended to demonstrate either an increase, decline or stabilizing of participation in the sport of harness racing.

Recipient reporting requirements – The committee recommends the following framework of reporting for harness racing industry recipients. These reports will be submitted directly to the Joint Standing Committees on Legal and Veterans Affairs and Appropriations and Financial Affairs. The first report is due December 1st, 2011. The first report must include the required data for the calendar years 2009, 2010 and up to November 2011. The Director of the Harness Racing Commission will develop a format for these reports based on the recommended framework. The reports may include any additional information the slot revenue recipient chooses to offer to demonstrate the extended economic benefits of the industry and the non-dollar value recognized by supporting the harness racing industry.

Commercial track reports shall include:

- The number of people attending harness races;
- The number of individual wagers placed on live harness races, the average wager amount and the total amount wagered;
- The number of individual wagers placed on intra state simulcast races, the average wager amount and the total amount wagered;
- The number of individual wagers placed on inter-state simulcast races, the average wager amount and the total amount wagered;
- The number of Maine-based harness races exported via simulcast;
- The amount of the harness racing handle kept by the commercial track and the distribution of the handle to the state and industry recipients;

- The amount of money received from the handle distribution from wagers at other tracks and off-track betting facilities;
- The amount of revenue from each fund under section 1036 distributed to the commercial track;
- The name of the owner and the primary location of the company licensed to operate the commercial track;
- The number of employees, full-time and part-time, at the commercial track and the total payroll amount for all receiving compensation from the commercial track;
- The amount of dollars spent on capital improvements to the commercial track and related facilities and a description of those improvements. The first report should include the amount spent since November 2005 broken down annually. Subsequent annual reports should include the amount spent on capital improvements the previous calendar year.
- Operating costs for the commercial track;
- Profit and loss or depreciation figures for the commercial track; and
- Administrative costs to comply with reporting requirements and contributions to the Harness Racing Commission Operating Account.

Agricultural fairs that conduct harness racing shall include:

- The number of people attending the fair;
- The number of wagers placed on harness races and the total amount of dollars wagered;
- The number of races exported via simulcast signal;
- The number of full-time and part-time employees of the fair;
- Reimbursements provided to fair volunteers or other fair personnel;
- The amount of dollars spent on capital improvements at the fair location and a description of those improvements. The first report should include the amount spent since November 2005 broken down annually. Subsequent annual reports should include the amount spent on capital improvements the previous calendar year;
- Operating costs for the agricultural fair;
- The amount of the handle retained by the fair and the amount distributed to industry recipients;
- The amount of the handle from the industry received by the fair;
- The amount of revenue distributed in accordance with Title 8, section 1036; and
- Administrative costs to comply with reporting requirements and contributions to the Harness Racing Commission Operating Account.

Agricultural fairs generally, reports shall include:

- The amount of money spent on fair premiums using revenue allocated from slot machines;
- A detailed accounting of slot machine revenue not used for fair premiums, if any; and
- Administrative costs to comply with reporting requirements and contributions to the Harness Racing Commission Operating Account.

Standard breeders and owners report shall include:

- The number and geographic distribution of licensed breeders in the state;
- The number of horses bred by each breeder and the number of those horses actively racing in Maine;
- The number of horses bred under the program that race out-of-state;

- Whether the number of standard-bred horses in Maine is sufficient to meet the needs of harness races conducted in the state;
- The amount of money received from the allocation of slot machine revenue;
- The amount of money in the Sire Stakes Fund and the amount that is spent to supplement harness racing purses and the average purse amount;
- A detailed accounting of the other uses of the Sire Stakes fund, including direct payment to breeders, promotion contracts, advertising, Maine Harness Horsemen contract and administrative costs; and
- Administrative costs to comply with reporting requirements and contributions to the Harness Racing Commission Operating Account.

Off-track betting facilities reports shall include:

- The number of wagers placed on intra-state and inter-state simulcast races and the total dollar amount for each;
- The number of employees of the facility, full-time and part-time and the total payroll amount for all receiving compensation from the facility;
- The operating costs for the facility;
- The name and primary location of the company licensed to operate the off-track betting facility;
- The amount of dollars spent on capital improvements to the facility and a description of those improvements. The first report should include the amount spent since November 2005 broken down annually. Subsequent annual reports should include the amount spent on capital improvements the previous calendar year;
- The amount of the harness racing handle kept by the OTB and the distribution of the handle to the state and industry recipients;
- The amount of money received from the handle distribution from wagers at tracks and other off-track betting facilities;
- The amount of revenue from each fund under section 1036 distributed to the OTB; and
- Administrative costs to comply with reporting requirements and contributions to the Harness Racing Commission Operating Account.

Other recommendations

- The Department of Public Safety, Gambling Control Board shall develop a system of reporting slot machine revenue and distributions that allows for verification of revenue reports provided by the slot machine facility operator.
- Future members of the policy committee that oversees gambling laws should conduct a literature review to examine the financial impact of illegal internet gambling on legal forms of gambling.
- Some members of the committee recommend that future members of the policy committee that oversees gambling laws should consider the adequacy of funding for the Prescription Drugs for the Elderly Program and increasing the percentage of slot revenue distribution to UMS and MCCS scholarships and include Maine Maritime Academy in that distribution. In addition, future committee members should determine whether the slot revenue distributions are subsidizing or stabilizing the harness racing industry. If the funds are stabilizing the industry, a cap on the distributions should be considered along with discontinuing the distributions to off-track betting facilities.

Appendix

Part FFF

Title 8, section 1036

Excel chart of slot revenue

Flow chart of slot revenue

Fund description chart

Reports submitted to LVA/AFA

Links to initiative LD 1371 and LD 1820

Links to written testimony

Recommended legislation

DRAFT